

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)
) Case No. 1:20-CR-00079-3
) (RJA) (JJM)
 Plaintiff,)
)
 vs.) September 15th, 2022
) 12:44 p.m.
 WALTER B. STEWART,)
)
 Defendant.)

**TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE RICHARD J. ARCARA
SENIOR UNITED STATES DISTRICT JUDGE**

APPEARANCES:

For the Plaintiff: TRINI E. ROSS, ESQ.
UNITED STATES ATTORNEY
BY: SETH MOLISANI, ESQ.
ASSISTANT UNITED STATES ATTORNEY
138 Delaware Avenue
Buffalo, NY 14202

For the Defendant: FEDERAL PUBLIC DEFENDER'S OFFICE
BY: MARY BETH COVERT, ESQ.
ASSISTANT FEDERAL PUBLIC DEFENDER
300 Pearl Street, Suite 450
Buffalo, NY 14202

Probation Officer: MATTHEW ZENGER

Court Reporter: MEGAN E. PELKA, RPR
Robert H. Jackson US Courthouse
2 Niagara Square
Buffalo, NY 14202
(716) 229-0880

12:37PM
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12:44PM 1 THE CLERK: Case 20-CR-79. United States v. Walter
12:44PM 2 Stewart. Sentencing. Counsel, please state your name and the
12:44PM 3 party you represent for the record.

12:44PM 4 MR. MOLISANI: Good afternoon, Your Honor. Seth
12:44PM 5 Molisani appearing on behalf of the United States.

12:44PM 6 MR. COMERFORD: Good afternoon, Your Honor. Mary
12:44PM 7 Beth Covert for Walter Stewart and he's present in court
12:44PM 8 beside me.

12:44PM 9 THE COURT: Are we ready?

12:44PM 10 MS. COVERT: Yes, Your Honor.

12:44PM 11 MR. MOLISANI: Yes, Your Honor.

12:44PM 12 THE COURT: The defendant is before the Court for
12:44PM 13 sentencing on his previous plea of guilty to one count of
12:44PM 14 felon in possession of a firearm and ammunition, in violation
12:44PM 15 of Title 18, United States Code, Sections 922(g)(1), and
12:44PM 16 924(a)(2), and Section 2.

12:44PM 17 I know, Ms. Covert, you've had a chance to review the
12:44PM 18 report. I assume you reviewed it with your client?

12:44PM 19 MS. COVERT: Yes, Your Honor. I have.

12:45PM 20 THE COURT: Okay. The Court hereby accepts the terms
12:45PM 21 and conditions of the plea agreement pursuant to Federal Rules
12:45PM 22 of Criminal Procedure 11(c)(1)(C) on a plea of guilty to a
12:45PM 23 felon in possession of a firearm and ammunition. I will place
12:45PM 24 the presentence investigation report in the record under seal.
12:45PM 25 If an appeal is filed, counsel on appeal will be permitted

12:45PM 1 access to the sealed report, except that counsel on appeal
12:45PM 2 will not be permitted access to the recommendation section.

12:45PM 3 The parties have filed the appropriate statement of
12:45PM 4 parties with respect to sentencing factors. There's no
12:45PM 5 dispute about the facts in the report and, therefor, the Court
12:45PM 6 adopts these facts as its findings of fact and hereby
12:45PM 7 incorporates them into the record. There are no objections to
12:45PM 8 the probation officer's conclusions as to the applicable
12:45PM 9 guidelines.

12:45PM 10 The report recommends that the defendant's base offense
12:45PM 11 level under Guideline Section 2K2.1(a)(iv)(A) is 20. Report
12:45PM 12 also recommends a two-level upward adjustment pursuant to
12:46PM 13 Guideline Section 2K2.1(b)(1)(A), as the firearm recovered in
12:46PM 14 the instant offense was stolen. The report also recommends a
12:46PM 15 four-level upward adjustment pursuant to Guideline Section
12:46PM 16 2K2.1(b)(6)(B), as the firearm and ammunition were used or in
12:46PM 17 possession or in connection with another felony offense.

12:46PM 18 The report also recommends a three-level downward
12:46PM 19 adjustment based upon the acceptance of responsibility, and
12:46PM 20 accordingly recommends the offense level should be properly
12:46PM 21 calculated at level 23 with -- the Criminal History Category
12:46PM 22 should be properly calculated as Category III as a result of
12:46PM 23 defendant's prior record.

12:46PM 24 Under this calculation, the advisory guideline range for
12:46PM 25 imprisonment is 57 to 71 months. The statutory maximum term

1 of imprisonment is 10 years. The advisory range for a fine is
2 from 20,000 to \$200,000 plus the cost of imprisonment and
3 supervised release or community confinement or home
4 confinement and probation. In accordance with the Supreme
5 Court decision in *U.S. v. Booker*, and the Second Circuit
6 decision in *U.S. v. Crosby*, this Court must consider the
7 guidelines, is not bound by them. The Court must also
8 consider the factors in 18 USC 3553(a).

9 I have received a sentencing memorandum as well as a
10 letter written to the Court by the defendant. And, I think,
11 with that, I think we will hear from counsel for Mr. Stewart.
12 Ms. Covert?

13 MS. COVERT: Thank you, Judge. The parties had
14 agreed that a sentence within the range was appropriate. And,
15 Judge, I probably would just add that even a sentence at the
16 low end of the guideline range in that 57, somewhere around
17 60-month, range would be the longest period of incarceration
18 that he's served in any case; five times the lowest -- five
19 times longer than any period of incarceration he's had thus
20 far. He had one stint of incarceration of 12 months, another
21 one of 9 months. He's been in custody already for over two
22 years, and I can tell you that it's had an effect on him.

23 He recognizes, Judge, I think he told probation and he
24 certainly tells the Court, that he's recognizing the
25 seriousness of the conduct, the time away from his family,

12:48PM 1 doesn't want to do this again, and he expressed an interest of
12:48PM 2 finding and getting some vocational training while he's
12:48PM 3 incarcerated so that he can get adequate employment when he's
12:48PM 4 out and provide for his family and his sons. He did have
12:48PM 5 contact with his sons, Judge, before he was incarcerated
12:49PM 6 regularly.

12:49PM 7 And, obviously, since incarceration, and with the COVID
12:49PM 8 pandemic, he hasn't been able to have the in-person contact
12:49PM 9 that he had before. And I think he recognizes that this the
12:49PM 10 end of the road. He needs to do something different with his
12:49PM 11 life and stay away from the influences that have made him make
12:49PM 12 some bad choices in the past.

12:49PM 13 In addition, Judge, I think he does have a bit of a drug
12:49PM 14 and alcohol history with -- mostly with marijuana. He has
12:49PM 15 expressed an interest, even though he knows he wouldn't get a
12:49PM 16 reduction in his sentence, if the Court could recommend the
12:49PM 17 Residential Drug Treatment Program for him. I think that that
12:49PM 18 would be a good step, in addition to vocational training. And
12:49PM 19 just, lastly, Judge, would be that you recommend a facility as
12:49PM 20 close to Western New York as possible so his father and his
12:49PM 21 kids can visit him.

12:49PM 22 THE COURT: All right. Mr. Stewart?

12:49PM 23 THE DEFENDANT: Yes, Your Honor. I know that I made
12:50PM 24 bad choices, and I'm really sorry about the choices that I
12:50PM 25 have made. And I know that this is not the lifestyle that I

12:50PM 1 want to live. I know that I want to be home with my sons. I
12:50PM 2 know that this is not what I want to do. I want to go home.
12:50PM 3 I want to start my own pest control company, and I just want
12:50PM 4 to be there for my sons, and I take full responsibility for my
12:50PM 5 actions and the decisions that I made. I'm very sorry.

12:50PM 6 THE COURT: You don't like jail, do you?

12:50PM 7 THE DEFENDANT: No, I do not, sir.

12:50PM 8 THE COURT: It's not a nice place to be, is it?

12:50PM 9 THE DEFENDANT: No, it's not.

12:50PM 10 THE COURT: And I think once you get a dose of it,
12:50PM 11 it's, you know -- you're in that cell, and the people are
12:50PM 12 telling you what to do, when to get up, where to go, what to
12:50PM 13 eat. You lose your freedom of choice. You can't do what you
12:51PM 14 want to do. It's a terrible place to be. You're with
12:51PM 15 people -- a lot of people you probably don't even like.

12:51PM 16 And when you get involved in drug activity, Mr. Stewart,
12:51PM 17 you're going to get caught. It's not a question of if you're
12:51PM 18 going to get caught. There's thousands and thousands of men
12:51PM 19 and women out there that's all they do. They want to catch
12:51PM 20 you. And they -- eventually, they do. You do not see very
12:51PM 21 many people -- I'm not aware of anybody who has been involved
12:51PM 22 in drug activity, of course I don't know if I know who they
12:51PM 23 are, but have done it all their life. There's just no future
12:51PM 24 in it. And you got so many things to live for. How old are
12:51PM 25 you now?

12:51PM 1 THE DEFENDANT: I just turned 31, Your Honor.

12:51PM 2 THE COURT: Thirty-one years old. You're a young
12:51PM 3 man. And there's so much more you can accomplish. Take the
12:51PM 4 talents that you have and use it in a positive way to make
12:51PM 5 your family proud of you, to enjoy them. Like, you know, it's
12:51PM 6 not easy being in jail on Thanksgiving or Christmas or the
12:52PM 7 holidays. And you're sitting there probably, and I understand
12:52PM 8 it, feeling sorry for yourself. Why wouldn't you? You're
12:52PM 9 sitting there and you can't do what you want. Your family's
12:52PM 10 doing stuff. You can't do anything. Your friends are doing
12:52PM 11 things.

12:52PM 12 And I just hate to see a young man waste his life. And I
12:52PM 13 see it a lot. And I just wish -- use your skills to do
12:52PM 14 something positive in life. You certainly get more pleasure
12:52PM 15 out of that, believe it or not. Getting involved in drug
12:52PM 16 activity, it's just not worth it. It's just not worth it.

12:52PM 17 You know, when I first became a Judge, I think there was,
12:52PM 18 like, 35,000 federal -- federal, not state, federal --
12:52PM 19 individuals in prison. And I would estimate that a vast
12:52PM 20 majority of them are for -- involved in drug activity. Today,
12:52PM 21 it's like a quarter of a million. I mean, that's a lot in 30
12:53PM 22 years to go from 35,000 to 250,000. These are approximate
12:53PM 23 numbers.

12:53PM 24 Do you understand what I'm saying? I'm not trying to
12:53PM 25 lecture to you. I don't want to give you a sermon. I just

12:53PM 1 want to see you turn your life around, and I hope you will.

12:53PM 2 It sounds like you really want to. And that's a very positive
12:53PM 3 step towards that. Anything from the government?

12:53PM 4 MR. MOLISANI: Your Honor, just consistent with the
12:53PM 5 various reasons that were set forth in the joint statement of
12:53PM 6 reasons that was filed by the parties under Docket 155, the
12:53PM 7 government is recommending a sentence consistent with the plea
12:53PM 8 agreement and recommending that the Court impose a sentence of
12:53PM 9 57 to 71 months consistent with the guidelines.

12:53PM 10 THE COURT: Well, I carefully reviewed everything
12:53PM 11 that's been submitted to the Court and heard from counsel, as
12:53PM 12 well as the government.

12:53PM 13 Pursuant to the Sentencing Reform Act of 1984, it's the
12:53PM 14 judgment of the Court that the defendant, Walter Stewart, is
12:54PM 15 hereby committed to the custody of Bureau of Prisons for a
12:54PM 16 period of 58 months. Cost of incarceration fee is waived.

12:54PM 17 Upon release, he shall be placed on supervised release for
12:54PM 18 a period of two years; shall report in person to the probation
12:54PM 19 office in the district in which he is released within 72
12:54PM 20 hours; shall comply with the standard conditions of supervised
12:54PM 21 release adopted by the Court; shall not commit federal, state,
12:54PM 22 or local crime; shall be prohibited from possessing a firearm,
12:54PM 23 ammunition, and other dangerous device and shall not possess a
12:54PM 24 controlled substance. He shall cooperate in the collection of
12:54PM 25 a DNA sample as required by the Justice For All Act of 2004.

1 Drug testing is required. He shall participate in a
2 program for substance abuse including substance abuse testing
3 such as urinalysis and other testing and shall undergo drug
4 and alcohol evaluation and treatment. If substance abuse is
5 indicated by testing, the probation officer will supervise the
6 details of any testing and treatment including the selection
7 of a treatment provider and schedule.

8 If inpatient treatment is recommended, however, it must be
9 approved by the Court unless the defendant consents. He is
10 not to leave treatment until completion or is ordered by the
11 Court. While in treatment and after discharge from treatment,
12 he is to abstain from the use of alcohol, be required to
13 contribute to the cost of services rendered.

14 He shall complete a domestic violence offender education
15 accountability program that should be supervised by the U.S.
16 Probation Office, including the selection of a provider and
17 schedule; shall comply with all orders of protection; shall
18 comply with the probation orders -- defendant shall notify the
19 probation office of all orders of protection.

20 He shall submit to a search of his person, property,
21 vehicle, place of residence, or any other property under his
22 control, and permit the confiscation of any evidence or
23 contraband discovered. He shall forfeit his interest in the
24 property specifically set forth in Section 8 of the plea
25 agreement and incorporated herein. The Court finds he does

1 not have the ability to pay a fine, will not impose a fine;
2 however, I will order the mandatory special assessment of \$100
3 which is due immediately. Payment shall begin under the
4 Bureau of Prisons Inmate Financial Responsibility Program. I
5 will recommend that he be housed as close to Western New York
6 so he could be visited by his family. Also, I will recommend
7 the 500-hour drug treatment program.

8 MS. COVERT: Thank you.

9 THE COURT: In determining the sentence, the Court
10 had considered the advisory range and the points raised by
11 counsel, the defendant, and the government as to what the
12 appropriate sentence should be. In addition, the Court has
13 considered the factors in 18 USC 3553(a), and finds the
14 sentence imposed is sufficient but not greater than necessary
15 to comply with the purpose of sentencing set forth in 18 USC
16 3553(a).

17 I have imposed a sentence within the applicable guideline
18 range and consistent with the Court's acceptance of the plea
19 under Rule 11(c)(1)(C). The parties are well aware of the
20 procedural history and the intended facts in this case. I
21 note that you're a young man. You have two children residing
22 with their mother. In your letter to the Court, you state, I
23 know the life that I was leading is not the life that I wanted
24 to keep living. I assume by that that he's sincere and he
25 wants to turn his life around. And I thought I'd give him an

12:57PM 1 opportunity to do that, which is consistent with the guideline
12:57PM 2 sentence I gave him at the low end of the guideline range, and
12:58PM 3 I think that's consistent with the terms of the plea
12:58PM 4 agreement. Also, I believe you will need a term of
12:58PM 5 supervision after your release.

12:58PM 6 You have a right to appeal the sentence if you feel the
12:58PM 7 Court misapprehended its authority or it imposed an illegal
12:58PM 8 sentence; however, you did waive that right to appeal. If you
12:58PM 9 feel that is not valid waiver, you may take that issue up
12:58PM 10 before the Second Circuit Court of Appeals.

12:58PM 11 I believe Count 5 of the superseding indictment is
12:58PM 12 pending. Is the government going to move to --

12:58PM 13 MR. MOLISANI: Correct, Your Honor. In light of the
12:58PM 14 Court's sentence here, the government is moving to dismiss
12:58PM 15 Count 5 of the superseding indictment as against this
12:58PM 16 defendant.

12:58PM 17 THE COURT: Good luck to you, Mr. Stewart.

12:58PM 18 MS. COVERT: Your Honor, could I just ask you to
12:58PM 19 repeat the length -- the term of --

12:58PM 20 THE COURT: I'm sorry?

12:58PM 21 MS. COVERT: Could I just ask you to repeat again the
12:58PM 22 term of incarceration?

12:58PM 23 THE COURT: The terms of incarceration?

12:58PM 24 MS. COVERT: Yes. The length of months. Could you
12:59PM 25 repeat the number of months?

12:59PM 1 THE COURT: Yeah. It was --

12:59PM 2 MR. MOLISANI: I believe it was 58.

12:59PM 3 THE COURT: It was one year -- one month above the

12:59PM 4 minimum.

12:59PM 5 MS. COVERT: Thank you, Judge.

12:59PM 6 THE COURT: The 58. I just think -- I think setting

12:59PM 7 the minimum sentence --

12:59PM 8 MS. COVERT: Fifty-seven. That's correct.

12:59PM 9 THE COURT: Yeah.

12:59PM 10 MS. COVERT: I wrote it down wrong, and then when you

12:59PM 11 made that other statement --

12:59PM 12 THE COURT: Happens to me all the time, Ms. Covert.

12:59PM 13 That's what happens when you get a little bit older.

12:59PM 14 MS. COVERT: Right behind you, Judge.

12:59PM 15 THE COURT: Court will be in recess.

12:59PM 16 THE CLERK: All rise

12:59PM 17 (Proceedings concluded at 12:57 p.m.)

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I certify that the foregoing is a
correct transcription of the proceedings
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Official Court Reporter